vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.1842 OF 2001**

The Managing Director
Krishna Sahakari Sakhar Karkhana
Ltd., having its factory at
Rethare Bk., Tal.: Karad
Dist.: Satara ... Petitioner

V/s.

1. Sampatrao Ganpati Mohite
residing at Balavade Bk.,
Tal.: Karad, Satara

2. Shri V.S. Kulkarni
Judge, Labour Court
Satara

3. Shri B.S. Bhadange
Member, Industrial Court
Satara ... Respondents

Mr.K.S. Bapat for Petitioner
None for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 13, 2005**

**ORAL JUDGMENT:**

. This Petition challenges the order of the Industrial Court granting reinstatement and continuity of service and full backwages to Respondent-workman. The petitioner is the Krishna Sahakari Sakhar Karkhana Ltd. The present petition has been filed through its Managing Director. Respondent No.1 was employed as a

permanent worker with the Petitioner-karkhana. On 31.3.1990, it was found that the Respondent No.1 had not reported for work from 21.3.1990. An explanation was sought from him regarding his absence. The workman did not reply to the show-cause notice and, therefore, a chargesheet was issued to him on 27.8.1990. The charges levelled against him were, inter alia (1) absence without leave; (2) continuous absence for more than 10 days without leave. An enquiry was instituted against him. It appears that the workman did not attend the enquiry or his duty after being issued the chargesheet. The enquiry therefore proceeded ex-parte. After submission of the report by the Enquiry Officer, the services of the workman came to be terminated by letter dated 31.12.1990. Aggrieved by this decision of the Petitioner, the workman filed complaint (ULP) No.31 of 1991 under Item 1 of Schedule IV of the MRTU & PULP Act before the Labour Court at Satara. The Petitioner resisted the complaint by filing its written statement. One of the prayers in the complaint was that if at all the Labour Court was of the view that the order of dismissal ought to be set aside, rather than awarding reinstatement with continuity of service and full backwages, compensation should be directed to be paid to the workman. The workman also filed an application on 5.8.1992 relinquishing his claim for reinstatement and

instead sought compensation in lieu of reinstatement. The Petitioner led evidence of its Labour Officer whereas the complainant i.e, the respondent-workman examined himself. The Labour Court after recording the evidence decided the complaint on merits. The Labour Court came to the conclusion that the complaint deserved to be dismissed since the misconduct had been proved before the enquiry officer. The Labour Court has thereafter held that the evidence of the Petitioner was trustworthy and has accepted the same after concluding that the enquiry against the respondent was fair and proper. The Labour Court also came to the conclusion that the findings of the enquiry officer were not perverse and that the punishment of dismissal was not shockingly disproportionate.

2. Aggrieved by this decision, the respondent-workman filed a revision before the Industrial Court under section 44 of the MRTU & PULP Act. The Industrial Court allowed the revision. Strangely, the Industrial Court declared that the Petitioner had indulged in unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act, although the complaint was filed under Item 1 of Schedule IV of the MRTU & PULP Act. The Industrial Court was of the view that the misconduct alleged against the workman was

"absence without leave" and therefore, the Labour Court was not right in dismissing the complaint. The Industrial Court was of the view that the standing orders did not permit the employer i.e., the Petitioner herein to dismiss the workman for the misconduct of absence without leave. The Industrial Court was impressed with the submission of the respondent that standing order 25 of the Standing Orders was applicable to the employee and therefore he could not be dismissed. On this basis, the Industrial Court has awarded reinstatement with continuity of service and full backwages.

3. A bare perusal of the chargesheet which is annexed to the Petition indicates that the charges alleged against the workman were (1) that he had remained absent from duty without permission; (2) that he was continuously absent from duty for a period of more than 10 days; (3) disobedience of the lawful orders of his superiors and (4) insubordination. These are acts of misconduct as defined in Standing Orders governing the service conditions of the employees of the Petitioner. Once it is proved that the respondent-workman had committed acts of misconduct under Standing Order 23, the punishments which could have been imposed on him are listed in Standing Order

24. These punishments are: (a) warning or censure (b) fine (c) order of dismissal and (d) stoppage of increments or promotion. Standing Order 25 is applicable for the following acts or omissions:

a) absence without leave without sufficient cause;
b) Late attendance;
c) negligence in performing duties;
d) neglect of work;
e) absence without leave or without sufficient cause from the appointed place of work;
f) entering or leaving or preempting to enter or leave the premises of the factory, except by a gate or entrance appointed,
g) Committing nuisance on the premises of the undertaking or places of work,
h) breach of any rule or instruction for the maintainance or running of any department.

The punishment of censure, warning or payment of fine can be imposed for the aforesaid acts or omissions which are obviously considered as minor misconducts.

5. The Industrial Court has evidently lost sight of the fact that the workman was chargesheeted for allegedly committing a misconduct under Standing Order 23. One of the charges was habitual absence without leave or absence without leave for more than 10 consecutive days or overstaying sanctioned leave without proper or satisfactory explanation which is a misconduct

under Standing Order 23(f). The chargesheet was not issued for absence without sufficient cause which is an act stipulated in Standing Order 25 but for absence without leave for more 10 consecutive days. Admittedly, the workman was absent from 21.3.1990 till he was chargesheeted. Even thereafter, although there was no order of suspension, the workman continued to remain absent from duty.

6. The Industrial Court has apparently committed an error by concluding that the punishment of dismissal could not have been imposed. Furthermore, the other charges alleged against the Respondents have been proved and constitute acts of misconduct as defined in Standing Order 23, for which the punishment of dismissal can be imposed. Apart from this order of the Industrial Court has to be set aside because the complaint has been allowed by the Industrial Court by declaring that an unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act had been committed when the complaint was filed under Item 1 of Schedule IV of the Act. The powers that the Industrial Court was expected to exercise were under section 44 of the Act and not under Item 9 of the Schedule IV of the Act.

7. In these circumstances, it must be held that the

order of the Industrial Court deserves to be set aside. The Petition is allowed accordingly. Rule made absolute. No order as to costs.